STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 26, 2000
v	No. 211880 Oakland Circuit Court
MARILYNN B. RUDOLPH, Defendant-Appellant.	LC No. 97-150366-FH

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of insurance fraud, MCL 500.4511(1); MSA 24.1411(1), and filing a false police report, MCL 750.411a(1)(a); MSA 28.643(1)(1)(a), for which she was sentenced to two years' probation. She appeals as of right. We affirm.

Defendant's sole issue on appeal is she was convicted without the benefit of the effective assistance of counsel. Because defendant did not move for a new trial or a *Ginther*[1] hearing in the trial court, our review of this issue is limited to mistakes apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

"In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by counsel's defective performance." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). Defendant bears the burden of establishing that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Defendant must further show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and the attendant proceedings were fundamentally unfair or unreliable. *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996).

In this case, the prosecutor moved to strike a witness, whom defense counsel intended to call in order to present the insanity defense, on the ground that the prosecutor had not received the statutorily required notice of intent to assert that defense. MCL 768.20a; MSA 28.1043(1) requires a defendant

in a felony case who proposes to present the defense of insanity "shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs." If the defendant fails to provide the statutory notice, "the trial court must exclude the evidence offered by the defendant for the purpose of establishing insanity." *People v Wilkins*, 184 Mich App 443, 447; 459 NW2d 57 (1990). There is no dispute that defense counsel failed to provide the requisite notice, thus obligating the trial court, on the prosecutor's motion, to disallow that defense. However, we conclude that, but for the error, there is no reasonable probability the result would have been different, or that the error rendered the proceedings fundamentally unfair or unreliable. *Poole, supra*.

The trial court instructed the jury that a defendant must have *knowingly* provided false information in order to be guilty of insurance fraud or filing a false police report. Although defense counsel was prevented from presenting a psychologist to advance the insanity defense, counsel nonetheless was able to present evidence and argue before the jury that defendant's misrepresentations to the police and her insurer were not "knowingly" provided due to an alleged medically induced state of "confusion." The jury's rejection of this argument militates against any suggestion that they would have looked favorably on the insanity defense.

Defendant testified that she had been confused in relation to the several misstatements she had provided to the police and her insurer. However, she offered no evidence in support of her claim of a severe and pervasive state of confusion. Further, although defendant testified she had been taking prescription drugs, she neither named any specific drug as causing a particular symptom relating to confusion nor even suggested that her alleged confusion corresponded with her use of medication. Defendant's brother testified that defendant had been confused and incoherent at times, but other evidence suggests this witness was overly sympathetic to defendant, thus casting his testimony in doubt.

In addition, convincing evidence exists to suggest that defendant did indeed have control of her faculties and used those faculties in self-serving ways. The police detective reported that when defendant was confronted with the inconsistent or implausible aspects of her representations, she promptly announced she wished to talk to her lawyer, returned to the detective and asked about making a deal, and thereafter provided yet another version of events. We detect cynicism behind defendant's pattern of providing misrepresentations that worked to her advantage, e.g., erroneously reporting the car as having been stolen from Southfield, stating the car had been in excellent condition, and representing she had initially paid much more for the car than what the records bore out. The jury likely thought it beyond coincidence that each of defendant's supposedly "confused" misrepresentations, if believed, would have benefited her. This record suggests that the insanity defense would have failed, just as did the "confusion" defense. Thus, defendant suffered no prejudice from counsel's failure to qualify that specific strategy for use at trial.

In any event, because the insanity defense in this case would have operated in essentially the same way as the defense that counsel actually put on—suggesting defendant was not responsible for her criminal conduct because she did not understand the nature of her actions—

counsel's failure to properly present the insanity defense did not render the proceedings fundamentally unfair or unreliable. *Poole, supra*.

Affirmed.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin

[1] *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).